



ORDINANCE 584

AN ORDINANCE AMENDING CHAPTER 155 OF THE CODE OF THE TOWN OF ELSMERE BY UPDATING THE EXISTING RULES ESTABLISHED BY CHAPTER 155 AND BY ESTABLISHING A PROCEDURE TO BE FOLLOWED SHOULD IT BECOME NECESSARY TO PROHIBIT A PERSON FROM ENTERING A PARK OR OTHER RECREATIONAL AREA.

Sponsored by: **1st District Councilman John Jaremchuk**
 5th District Councilwoman Joann I. Personti

First and Second Reading: August 14, 2014 Council Meeting

Results: _____

Third and Final Reading: September 11, 2014 Council Meeting

Results: _____

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WHEREAS, the Mayor and Council have designated parks throughout the Town for the enjoyment of the public and to provide them with recreational opportunities and have also established rules to be followed while utilizing those parklands and recreational areas; and

WHEREAS, due to establishment of the Elsmere Bark Park and the elimination of the Towns' Tennis Courts it has become necessary to update the existing rules and regulations contained in Chapter 155; and

WHEREAS, the Mayor and Council have determined that in order ensure that all of the Towns' parklands and recreational areas remain locations for the enjoyment of all, it may unfortunately become necessary from to time to prohibit a person from being able to enter a park or recreational area.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, THE FOLLOWING:

That Chapter 155 of the Code of the Town of Elsmere is amended as follows;

1. That Chapter 155 Section 155-1 (M), be amended as follows;

Delete the words "Town Solicitor" as it appears in the first line and replace them with words "Town Manager"; and
2. That Chapter 155 Section 155-1 (O), be deleted in its entirety and a new Chapter 155 Section 155-1 "O" be inserted in its place to read as follows.

Section 155-1 (O) Bark Park.

Dogs shall be permitted in the Town of Elsmere's Bark Park. In addition to the rules and regulations established by this chapter, the Town Manager shall establish rules and regulations specific to the Bark Park and shall post those rules and regulations at the Bark Park. Once posted those additional rules and regulation shall have the same authority and shall be enforceable as if they had been contained in this chapter and shall be enforced as such; and

3. That a new Section 155-5. Additional Penalties, be inserted to read as follows;

Section 155-5. Additional Penalties.

In addition to the penalties set forth in Section 155-4 of this chapter or of any law of the State of Delaware, any person may be prohibited from entering any park or recreation area within the Town of Elsmere in accordance with the following.

- A. Nothing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the State or Federal constitutions. However, a person engaged in such protected activity who commits acts that are not protected, but that violate applicable good conduct, shall be subject to prohibition as provided by this Section.
- B. For purposes of this Section, "applicable good conduct" includes any violation of the provisions of this chapter as well as any violation of any applicable Town ordinance, any applicable criminal or traffic law of the State of Delaware or any applicable law controlling alcoholic beverages. For purposes of this Section, "applicable" means relating to the person's conduct while in a parkland or recreational area.
- C. A prohibition issued under the provisions of this Section shall be for thirty (30) days. If the person to be prohibited from entering a parkland or recreational area has been excluded from any parkland or recreational area at any time within two years prior to the date of the present prohibition, the prohibition shall be for ninety (90) days. If the person to be excluded has been excluded from one or more parks on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.
- D. Before any person is prohibited from entering a parkland or recreational area under this Section, they shall be entitled to a hearing before the Town Manager.
- E. Procedure for a person to be prohibited from entering a parkland or recreational area.
 1. Any person or person(s) alleging that another person has committed an act which is in violation of applicable good conduct, which warrants the person being prohibited from entering a parkland or recreational area must file a written complaint with the Town Manager.

2. Once a complaint has been filed, the Town Manager shall provide written notice to the person alleged to have committed the violation of applicable good conduct.

The notice shall specify the following;

- a. A brief description of the alleged violation of applicable good conduct.
 - b. Notice that a hearing will be held to determine if the allegations are valid.
 - c. Notice that the accused has a right to appear at the hearing and present any evidence or witnesses they may have as well as an opportunity to question anyone accusing them as well as any witnesses of the alleged violation of good conduct.
 - d. The date, time and location of the hearing and the procedures that will be followed during the hearing.
 - e. Notice that failing to appear at the hearing may result in the accused being prohibited from entering a parkland(s) or recreational area(s).
 - f. Notice that any prohibition from entering a parkland or recreational area may be appealed to the Mayor and Council if filed within ten days of the Town Managers decision or to a court of competent jurisdiction within the time line set by that court.
- F. If at the conclusion of any hearing the Town Manager finds that it is more likely than not, the person accused in fact committed the violation, the Town Manager may;
1. Attempt to determine if the parties can reach a consensus as to how the issue can be resolved.
 2. Direct that the parties seek the services of a mediator provided by many non-profit organizations in an attempt to resolve the issue(s). If this method is agreed to and the accused does not attend the mediation, fails to reach an agreement at the mediation or fails to follow any agreement made at the mediation, the Town Manager shall issue a notice to the accused prohibiting them from entering a parkland(s) or recreational area(s) in accordance with this section.
 3. Prohibit the accused from entering a parkland(s) or recreational area(s) in accordance with this section.

4. Any decision by the Town Manager to prohibit someone from entering a parkland or recreational area may be appealed to the Mayor and Council, provided that the appeal is filed in writing and within ten days of the Town Manager's decision. In any appeal hearing before the Mayor and Council the following shall apply;
 - a. The Mayor and Council shall set their own rules and procedures.
 - b. At the conclusion of the hearing they shall;
 1. Affirm the Town Manager's decision.
 2. Reverse the Town Manager's decision.
 3. Modify the Town Manager's decision in whole or in part.
 5. Any decision of the Town Manager or the Mayor and Council, to prohibit a person from being permitted to enter a parkland or recreational area may be appealed to a court with proper jurisdiction provided it is filed in accordance with the rules of that court.
- G. The following are examples of actions or conduct which would warrant a person being prohibited from entering a parkland or recreational area. It is not all inclusive and is only provided as an example.
1. Placing another person in fear of imminent physical injury by some movement of a person's body or any instrument.
 2. Intentionally causing inconvenience, annoyance or alarm to any other person utilizing a park or recreational area.
 3. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present.
 4. Creating a physically offensive condition which serves no legitimate purpose.
 5. Insulting, taunting or challenging another person in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

6. The conviction or entering of a plea of guilty to any violation of Title 4, 11, 16, or 21 of the Delaware Code if committed in a parkland or recreational area, or if the violation occurred outside of a parkland or recreational area, but is directly related to an incident which occurred at a parkland or recreational area.

- H. At any time within the period of prohibition, a person receiving such notice of exclusion may apply in writing to the Town Manager for a waiver of some or all of the effects of the prohibition for good reason.

If the Town Manager grants a waiver under this Subsection, the Town Manager shall promptly notify the Elsmere Police Department and the Mayor and Council.

The Town Manager shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the parkland or recreational area during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the Town Manager determines to be relevant to the determination of whether or not to grant a waiver.

Notwithstanding the granting of a waiver under this Subsection, the prohibition will be included for purposes of calculating the appropriate length of prohibition.

The Town Manager's decision to grant or deny, in whole or in part, a waiver under this Subsection is at the sole discretion of the Town Manager, and is not subject to appeal or review.

- I. If an appeal of the prohibition is timely filed, the effectiveness of the prohibition shall be stayed, pending the outcome of the appeal. If the prohibition is affirmed, the remaining period of exclusion shall be effective immediately upon the issuance of the decision.
- J. If a person is issued a subsequent prohibition while a previous prohibition is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed prohibition shall be counted in determining the appropriate length of the subsequent exclusion. If the previous prohibition is set aside, the term of the subsequent prohibition shall be reduced, as if the previous prohibition had not been issued. If multiple prohibitions issued to a single person for a single park are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.

- K. No person shall enter or remain in any parkland or recreational area at any time during which there is in effect a notice of prohibition issued under this Section prohibiting that person from that parkland or recreational area.
- L. Any person entering or remaining in any parkland or recreational area at any time during which there is in effect a notice of prohibition issued under this Section prohibiting that person from that parkland or recreational area shall be guilty of Trespass in the third degree as defined by Section 821 of Title 11 of the Delaware Code.

August 14, 2014
First and Second Reading

September 11, 2014
Third and Final Reading

Steven E. Burg, Mayor

Joann I. Personti, Secretary

Approved as to form:

Town Solicitor

SYNOPSIS
ORDINANCE 584

This Ordinance updates portions of the code which are no longer valid such as the Town's tennis courts, addresses the creation of the Town's Bark Park, changes the Town Solicitor's authority to close a park and grants that authority to the Town Manager. It also provides a procedure that would allow a person to be prohibited from entering a parkland or recreational area, but only after being provided due process and an opportunity to appeal any such decision.

Fiscal Impact: None